HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Application No. 699 of 2001
(Old No. 5668 of 1997)

Date of Decision : 24th March, 2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting.

Date Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Miscellaneous Application No. 699 of 2001
(Old No. 5668 of 1997)

1. Ganesh Dutt Bhatt alias Ganesh Chand Bhatt
S/o Sri Laxmi Dutt Bhatt
R/o Nawabi Road, Haldwani
District – Nainital

2. Harish Chand Bhatt
S/o Sri Ram Chand Bhatt
R/o Artola, Jageshwar,
District – Almora … Applicants

Versus

State of Uttaranchal … Respondent

Sri Vinod Sharma, Learned counsel for the applicants
Sri Rajeev Mohan, Brief holder for the State

Hon'ble J.C.S. Rawat, J.

The present petition has been directed to quash the entire proceedings in Criminal Case No. 818 of 1997 State Vs. Harish Chandra and others u/s 26 of Forest Act, Section 4/14 of U.P. Resin and other Forest Produce (Regulation of Trade) Act, 1976 pending before the court of Chief Judicial Magistrate, Nainital including the chargesheet and the summoning order passed by the Chief Judicial Magistrate, Nainital.

Brief facts for the disposal of this petition are that a FIR was lodged at Police Station Bhowali alleging therein that on 30.08.1996 at about 1:00 pm, the Circle Officer Bhowali received a telephonic communication that some truck drivers were carrying the resin and forest produce in their trucks. On receipt of the said information, the Police Officers reached at the spot and they stopped the Truck Nos. U.P. 82/6737, U.P. 82/4114, U.P. 94/1011, U.P. 48-70, U.P. 81/424, U.M.V. 5083 and U.P. 01/855 and they recovered the forest produce from their possession. Thereafter, a case was registered against the truck drivers and they were arrested at the spot and the truck were taken into custody.

After the investigation, chargesheet was submitted against the applicants alongwith the other drivers. The learned Magistrate thereafter took the cognizance. Meanwhile, the Forest Deptt. had also filed compliant against the drivers as well as the other persons of the same incident excluding the name of the present applicants. The complaint is Annexure-14 to the writ petition.

Feeling aggrieved by the cognizance order passed by the Magistrate, the present petition has been filed before this court.

Heard learned counsel for the parties and perused the record.

Learned counsel for the applicants contended that Section 16 of the U.P. Resin and other Forest Produce Act 13, 1976 provides that no court shall take cognizance of any offence punishable under the Act except on a report in writing of the facts constituting such offence made by the officer not below the rank of Range Officer or by such other officer as may be empowered by the State Government. It was further contended that Section 17 of the aforesaid Act also provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in any contract or other instruments. It was further contended that the forest authority had already filed a complaint u/s 16 of the U.P. Resin and other Forest Produce Act 13 of 1976 being a criminal complaint case No. 1180 of 1996 on the same basis of the same F.I.R. of case crime No. 137 of 1996 was also registered by the police before the police station Bhowali on which the cognizance has been taken by the learned Magistrate. Perusal of the record clearly reveals that the Forest Department had filed a complaint and the Forest Department had not made any averment against the applicants nor they were impleaded as an accused in the said complaint. As such, the applicants were not involved in the said offence. The chargesheet was also submitted against the other persons who were arrayed as an accused in the complaint. The Magistrate during the trial clubbed both the prosecutions u/s 210 of the Cr.P.C. This fact is also revealed from the perusal of the judgement. In view of the bar created by the provisions of Section 16

of the aforesaid Act, the police was not authorized or competent to file any chargesheet in respect of the offence committed under the said Act. The Forest Department as provides under Section 16 of the said Act was authorized or competent to file complaint before the competent court in which the magistrate can take cognizance. The provisions of Section 17 clearly provides its overriding effect over the general law. The forest department has not made any averment or allegations against the accused and the police had filed chargesheet in contravention of Section 16 of the said Act. As such the cognizance order as well as the chargesheet are liable to be quashed against the present applicants and the same are quashed.

In view of the above observations, the petition is allowed.

(J.C.S. RAWAT, J.)

24th March, 2006
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